IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5249 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ILIYAS JAMALBHAI MANSURI

Versus

PC PANDE COMMISSIONER OF POLICE AHMEDABAD

Appearance:

MR MIG MANSURI for Petitioner

Mr. K.T.Dave, AGP for Respondents Nos. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. M.I.G. Mansuri for the petitioner and learned A.G.P. Mr.K.T. Dave on behalf of the respondents nos.1, 2 and 3.

1. The detention order dated 28-4-1999 passed by the Commissioner of Police, Ahmedabad (the respondent no.1) against the petitioner-detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served and supplied to the petitioner -detenu under Sec.9(1) of "PASA" , copy of which is produced at Annexure "C" inter alia indicate that prohibition case vide CR no.5024/99 was registered against the petitioner at Kalupur Police Station on 18-4-1999. That in the said case Indianmade foreign liquor alongwith one three-wheeler and two two-wheelers have been seized from the possession of the petitioner and the case is pending for investigation.

2.1 The grounds of detention further indicate that two witnesses on assurance of their anonymity have given statements dated 28-4-1999 regarding bootlegging activities of the petitioner and have related the alleged incidents dated 10-4-1999 and 14-4--1999 respectively.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his bootlegging activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that impugned order suffers from the vice of non application of mind inasmuch as till the impugned order is passed, the petitioner was in custody and is released on bail on the same day i.e.28-4-1999. That the grounds of detention does not disclose whether the aspect of less drastic remedy like opposing and/or claiming cancellation of bail has been considered before passing the impugned order.

6. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134), the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal

no.1056/99 decided on 15-9-1999 by this Court (Coram:C.K.Thakkar & A.L.Dave,JJ.).

6. On perusal of the grounds of detention, it appears that the detaining authority was supplied with the information regarding bootlegging activities of the petitioner on 28-4-199 on which he appears to have verified the statement recorded on the same day by the sponsoring authority. Thereby, the fact that the petitioner was in custody or that his bail application was fixed for hearing on that day was not brought to the notice of the detaining authority. Had the detaining authority considered that aspect either the bail application could have been opposed or cancellation of the same could have been applied for on the material collected regarding the bootlegging activity of the petitioner. On that count, the order appears to have been passed without due application of mind and suffers from the infirmity of non application of mind on the part of the detaining authority which has vitiated the subjective satisfaction and has rendered impugned order invalid.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 28-4-1999 passed by the Commissioner of Police, Ahmedabad (respondent no.1) is hereby quashed and set aside. The petitioner-detenu-Illiyas Jamalbhai Mansuri is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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